



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P(MD)No.15291 of 2021

& WMP (MD) No.12188 of 2021

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A.Sudalai Muthu

... Petitioner

Vs.

1.The Director General of Police,
O/o. Director General of Police,
Chennai-600 004

2.The Deputy Inspector General of Police,
Trichy Region,
Trichy.

3.The Commandant,
Office of the Commandant,
Tamil Nadu Special Police 1 Battalion 1,
Trichy-12.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records in relating to the impugned order of the third respondent in Na.Ka.No.D1/10762/2018 dated 26.11.2018 and to quash the same as arbitrary and illegal and consequently, to direct the respondents to grant appointment to the petitioner on compassionate ground in the suitable post, based on his educational qualification within the time frame fixed by this Court.

For Petitioner : Mr.M.S.Jeyakarthik

For Respondents : Mr.A.K.Manickam

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, calling for the entire records in relating to the impugned order of the third respondent in Na.Ka.No.D1/10762/2018 dated 26.11.2018 and to quash the same as arbitrary and illegal and consequently, to direct the respondents to grant appointment to the petitioner on compassionate ground in the suitable post, based on his educational qualification within the time frame fixed by this Court.



2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

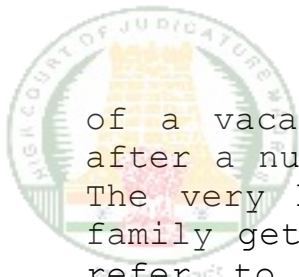
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4. According to the petitioner, his father namely R.Arunachalam, joined as Constable in the third respondent Battalion and died on 11.03.1981 while in service, leaving behind his wife and five children. During the time of his father's death, the petitioner and his siblings are minors. Thereafter, after attaining the majority of his elder brother namely Ramasamy, the petitioner submitted an application in the year 1994 seeking for compassionate appointment. Since no response was forthcoming, the petitioner submitted another application dated 25.06.2018 by enclosing all relevant documents to the respondents.

5. Pursuant to the above application, the first respondent vide proceedings dated 31.08.2018 instructed the third respondent to verify the petitioner's eligibility for appointment on compassionate grounds. However, no action was taken by the third respondent. Therefore, the petitioner again sent a representation dated 11.10.2018 to the first respondent seeking for compassionate appointment. The first respondent again instructed the third respondent vide his proceedings dated 16.11.2018 to verify the petitioner's eligibility for compassionate appointment. But the third respondent vide his proceedings dated 26.11.2018 rejected the petitioner's application on the ground that the said application was submitted after a lapse of 3 years. Subsequently, the petitioner made a representation dated 24.07.2020 to the authority through a registered post seeking for compassionate appointment. However, the said representation is still pending. Therefore, the petitioner is before this Court by way of the present writ petition.

6. According to the petitioner, his mother is an illiterate and she was not aware about the procedure for seeking compassionate appointment. Therefore, the petitioner was unable to submit his application in time. This Court, in similar circumstances, following the catena of judgments of the Hon'ble Supreme Court and Full Bench of this Court, has clearly held that the application has been construed to be submitted within the prescribed time as per the Government Order.

7. Admittedly, when the petitioner's father died on 11.03.1981, he was a minor and was not eligible for appointment. After a period of nearly 13 years, the petitioner claims appointment on compassionate grounds. There cannot be reservation



of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief. In this regard, it is worthwhile to refer to a decision reported in "**State of Manipur vs. Md. Rajaodin**" {(2003) 7 SCC 511}, wherein the Hon'ble Supreme Court, in paragraph 11 of its judgment, held as under:-

"In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated in Phoolwati (Smt.) vs. Union of India and others (1991) Supp. (2) SCC 689) and Union of India and others vs. Bhagwan Singh (1995 (6) SCC 476). In Director of Education (Secondary) and Anr. vs. Pushpendra Kumar and others (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends, meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and there nullity the main provision by taking away completely the right conferred by the main provision."



8. Therefore, the scheme of providing compassionate appointment can be extended only to eligible member of the family and not to an ineligible person. Scheme has not been framed to provide employment assistance as and when the son or daughter of the deceased employee attains majority. Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority. Scheme only enables those who are eligible and satisfy all the eligibility criteria including age, within three years from the date of death.

9. In the light of the above decisions supra, no relief can be granted be granted as there is no illegality in the impugned order of the third respondent in Na.Ka.No.D1/10762/2018 dated 26.11.2018. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Director General of Police,
O/o. Director General of Police,
Chennai-600 004

2.The Deputy Inspector General of Police,
Trichy Region,
Trichy.



3.The Commandant,
Office of the Commandant,
Tamil Nadu Special Police 1 Battalion 1,
Trichy-12.

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-27410[F] dated
26/08/2021)

+1 CC to M/s.SPL GP (SR-27624[F] dated 31/08/2021)

W.P (MD) No.15291 of 2021
26.08.2021

PS (CO)
SB(14.09.2021) 5P 6C